V. GRANT OF QWEST'S APPLICATION WILL SERVE THE PUBLIC INTEREST

A. The Record Demonstrates That Minnesota Consumers Will Benefit Greatly From Increased Competition

Grant of this application clearly is in the public interest. It will bring the substantial benefits of long distance competition to consumers throughout Minnesota – benefits that already have been established by Qwest's (and other BOCs') experience in other states and consistently have been confirmed by independent studies. [17/]

Qwest's entry into the long distance market in Minnesota would not only increase customer choice and competition in the *long distance* market, but would also result in similar benefits in the *local* market. Experience has shown that a BOC's imminent entry into the long distance market acts as a catalyst for CLECs to accelerate entry into local exchange markets. In particular, IXCs faced with the prospect of increased competition for their core long distance customers accelerate their local entry plans in an effort to retain those customers through bundled service packages. The Commission's own data bear this out. [18/]

If Qwest is allowed to offer interLATA long distance services in Minnesota, consumers in both the local and long distance markets there will experience similar benefits and savings to those described above, including new choices and options in both urban and rural areas of the state.

17/ *See TRAC Estimates New York Consumers Save Up to $700 Million a Year on Local and Long Distance Calling*, Telecommunications Research Action Center, May 8, 2001. http://trac.policy.net/proactive/newsroom/release.vtml?id=18740. *See also Maryland Consumers Could Save Up to $155 Million a Year in Local and Long Distance Telephone Costs*, Telecommunications Research Action Center, June 18, 2002, http://trac.policy.net/proactive/newsroom/release.vtml?id=19200.

18/ *See* News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition*, Federal Communications Commission (released May 21, 2001). *See also* Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2002* (released Dec. 9, 2002).

There is no reason to deny consumers these benefits now. Qwest fully satisfies Commission precedent under Section 271(d)(3)(C). The local exchange market in Minnesota is indisputably open to competition. Qwest has satisfied the competitive checklist in Minnesota on materially the same terms that the Commission already has approved in 12 other states. And Qwest has a strong PAP in place to assure ongoing compliance with the Act - a PAP that has drawn no challenges here. [19/]

Indeed, with the exception of one issue, no party seriously suggests that grant of this application is not in the public interest. [20/] We discuss that matter, the so-called "unfiled agreements" enforcement case, in more detail below. Suffice it to say that the extensive record conclusively demonstrates that the public will benefit from Qwest's provision of competitive interexchange services, and fully supports approval of Section 271 authority in Minnesota.

19/ On April 30, 2003, Qwest filed with the MNPUC a revised SGAT Exhibit K, the Minnesota Performance Assurance Plan, reflecting the changes to section 18.0 that Qwest committed to make during the MNPUC's April 8, 2003 hearing.

20/ Minnesota Commissioner Reha expressly agrees that Qwest has "satisfied the first two criteria in making the public interest determination. Granting the application would be consistent with promoting competition in the local and long distance telecommunications markets; and the MNPUC has approved a Minnesota Performance Assurance Plan that, if followed, will assure anti-backsliding." Reha Comments at 27. However, she states that the unfiled agreements matter nevertheless forecloses her support here until Qwest agrees to the restitution order of the MNPUC. *Id.* at 28.

B. The "Unfiled Agreements" Case Does Not Present a Basis For Denial Of This Application

1. The Record Here is Fully Consistent With Commission Precedent that Past Section 252 Violations Are Not Current Section 271 Issues

The "unfiled agreements" matter already has been the subject of extensive debate in the context of Qwest's prior applications to enter the interLATA market. [21/] Significantly, the Commission has twice rejected efforts to import this enforcement issue into the Section 271 context. It should do so a third time here.

The "unfiled agreements" matter relates to certain contracts between CLECs and Qwest between 1999 and 2001 that were not filed with public utility commissions as interconnection agreements. Qwest does not minimize any past compliance failures, either in Minnesota or elsewhere. The Company has treated this matter very seriously, and took strong steps a year ago to address it through new policies and management oversight. The compliance problems have been resolved on a going forward basis for a year or more.

More specifically, in Minnesota, as in the states included in the Qwest III and Qwest IV applications previously approved by this Commission, Qwest has complied with its obligations under Section 252 as clarified by the Commission in its October 2002 Declaratory Ruling. [22/] That Ruling articulated the scope of Section 252, defining which ILEC-CLEC agreements qualify as "interconnection agreements" that must be filed with and approved by

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[21/] The Commission considered and ruled on this issue in both the Qwest III and Qwest IV proceedings; indeed, the Commission specifically invited comment on the relevance of the "unfiled agreements" issue to Section 271 in connection with its consideration of Qwest's initial five-state application. *See* Public Notice, WC Docket No. 02-148 (Aug. 21, 2002).

[22/] *Memorandum Opinion and Order, Qwest Communications International, Inc. Petition for Declaratory Ruling On the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1),* WC Docket No. 02-89, FCC 02-276 (Oct. 4, 2002) ("Declaratory Ruling").

state utility commissions. That Ruling also is consistent with the new policies Qwest adopted in May 2002 under which all future contracts creating ongoing obligations with respect to Sections 251(b) or (c) are filed with state commissions for approval under Section 252. A year ago Qwest also created a senior-level committee to enforce compliance with this policy. *Qwest III Order* ¶ 470. These policies have been in effect in Minnesota and across all other states in the Qwest region for the past year.

Furthermore, as in other states, Qwest has filed all older contracts with CLECs in Minnesota that contain any currently effective going forward obligations arising under Sections 251(b) or (c). [23/] This includes the contracts determined to be interconnection agreements in the Minnesota enforcement proceeding, and "ancillary" form contracts that the DOC did not consider to be interconnection agreements. [24/]

Thus, Qwest stands in exactly the same position in Minnesota as it did in the other states where the Commission has rejected similar "unfiled agreement" arguments under the Section 271 public interest element. In both Qwest III and Qwest IV the Commission ruled that it was sufficient for Section 271 purposes if Qwest demonstrates that it is in present compliance with Section 252. As the Commission has explained,

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23/ In that regard, Qwest has formally filed all older contracts that the MNPUC found to be interconnection agreements in its enforcement docket to the extent that such contracts remain in effect.

24/ As discussed in its Application Brief, Qwest filed these "ancillary" contracts based on the Commission's suggestion in the *Qwest III Order* that one such contract, at least on its face, did not appear to be the kind of form contract that is outside Section 252. *See Qwest III Order* ¶ 491 n.1789. These standard contracts were provided to the DOC, the complainant in the Minnesota enforcement proceeding, in the course of its investigation, and the DOC did not identify them as interconnection agreements. The contracts establish terms available routinely to all CLECs for the specified activities. Irrespective of whether on full examination such "ancillary" agreements fall within the scope of Section 252, Qwest has no objection to filing them, and has done so.

> With respect to agreements that a state commission has approved, competitive LECs are permitted to opt-in to those agreements. With respect to agreements that were rejected by a state, we find that there is no discrimination on a going-forward basis because the section 251 provisions therein are void as to the original parties.

Qwest III Order ¶ 487. The Commission's reasoning and conclusion apply with equal force to Minnesota. "The possibility of noncompliance with section 252 on a going-forward basis . . . was eliminated by each state commission's approval or rejection of those agreements." *Id.* ¶ 486; *Qwest IV Order* ¶ 132. [25/]

Similarly, the Commission has twice rejected attempts by AT&T to argue that Qwest's past non-compliance with Section 252 - notwithstanding its present compliance - provides a separate basis for denying a Section 271 application. The Commission has emphasized that such past conduct presents an enforcement question, and could expose the carrier to penalties. But the Commission has refused to find that past non-compliance provides a basis, under the public interest element of Section 271, to deny consumers the benefit of more interexchange competition in the face of an otherwise satisfactory application. *See, e.g., Qwest III Order* ¶ 466; *Qwest IV Order* ¶ 124.

This precedent applies with equal force here. Qwest is in compliance with Section 252 and has been for some time. All that remains in Minnesota are proceedings

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[25/] *See also Qwest III Order* ¶ 488, where the Commission stated: "Under the framework set forth in the Act, competitive carriers only are entitled to avail themselves of terms and conditions of *interconnection agreements* through the operation of section 252(i). Where a state commission has determined that the agreements filed by Qwest on or before August 22, 2002 were not interconnection agreements, then no discrimination within the meaning of sections 251, 252, or 271 has occurred because sections 251 and 252 have not been triggered with respect to those agreements. Where a state commission has determined that any previously unfiled agreement is an interconnection agreement, that determination also definitively eliminated any discrimination on a going-forward basis because competitors then were able to opt-in to any such agreement." [Emphasis in original.]

regarding appropriate penalties for the historical period of non-compliance. The MNPUC has issued an order that would provide for a large fine and refunds to CLECs for interconnection and access services purchased from Qwest for a period ending May 15, 2002 - nearly a year ago. [26/] Qwest believes this remedy exceeds the MNPUC's jurisdiction in part, and in any event goes beyond what is supported by the record. Nevertheless, Qwest has been willing to work with the MNPUC to try to reach a settlement of the enforcement docket. The company previously offered to resolve this matter on terms that would provide for refunds for interconnection but not access (which is not an interconnection service under Section 251), as well as other voluntary financial commitments. [27/] However, Qwest has legal and other substantive concerns with the MNPUC's order as it stands. The company is evaluating its options, including the possibility of appealing the order to court. It remains Qwest's preference to resolve the penalties matter without prolonged litigation, but the company also is not willing to waive its legal rights.

The Commission has emphasized that allegations of "any past noncompliance with section 252" can and should be addressed "in a separate enforcement proceeding" – precisely the sort of proceeding the MNPUC is conducting – independent of this Commission's Section 271 review. *See Qwest IV Order* ¶ 134. This is so even where, as here, an "application involves a state where express findings have been made that Qwest knowingly and intentionally engaged in discriminatory behavior." *Id.* ¶ 133 (referring to pending New Mexico Public

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[26/] Order After Reconsideration on Own Motion, Docket No. P-421/C-02-197 (April 30, 2003) ("April 2003 MNPUC Penalties Order").

[27/] *See, e.g.*, Transcript of April 8, 2003 Meeting of the MNPUC, PUC Docket No. P-421/C-02-197, at 65-67 ("MNPUC April 8, 2003 Transcript") (filed as attachment to Qwest *ex parte* April 29a, 2003).

Regulation Commission enforcement proceeding). [28]/ Consistent with this directive, every other state authority that has considered this issue – even those that concluded that Qwest should have filed the agreements at issue or that Qwest willfully violated its Section 252 obligations – has concluded that this matter does not present a Section 271 barrier and has determined that it can be resolved outside the Section 271 process before this Commission. [29]/

Similarly, the "unfiled agreements" docket in Minnesota does not provide a ground for delaying action here. The same Commission precedent applies. The Minnesota local exchange market is open and competitive today. The Minnesota PAP provides assurance against back-sliding concerns in the state, just as similar plans have satisfied the Commission's standards in Qwest III and IV. These matters are not affected by how the penalties phase of the Minnesota enforcement docket, involving conduct that ended at least a year ago, is resolved.

The Department of Justice agrees. While the Department "commends the [MNPUC] for its careful attention" to the "unfiled agreements" matter, it nonetheless "defers to this Commission's previous Qwest 271 orders concluding that the record does not demonstrate ongoing discrimination and rejecting the argument that Qwest currently violates section 252(a)

28/ The allegations under investigation in the Minnesota enforcement proceeding, meanwhile, were no secret to the Commission at the time it was considering the Qwest III and Qwest IV applications. AT&T filed materials from the Minnesota docket with the FCC, including the orders of the Minnesota ALJ and the MNPUC's order on liability. These Minnesota matters were noted and discussed – indeed, the Commission recited the procedural history of the Minnesota enforcement proceeding, and summarized the issues under review there – in the *Qwest III Order* at ¶¶ 467-69.

29/ The Commission also has rejected the contention of the MNPUC that Qwest's failure to file certain interconnection agreements "skewed" the results of the Section 271 review process. *Order Assessing Penalties*, Docket No. P-421/C-02-197 (MNPUC Feb. 28, 2003) at 9. *See Qwest III Order* ¶¶ 486, 492-94 (finding no evidence that records of Section 271 proceedings were compromised "because certain competitive LECs did not participate" or that "the KPMG OSS test data were compromised as a result of unfiled agreements"); *Qwest IV Order*, ¶¶ 132, 136-37 (same).

and that approval of Qwest's joint application would be against the public interest." DOJ Evaluation at 9 (internal quotation marks and footnotes omitted). The Department supports grant of this application.

In short, the Commission should find - now for the third time - that Qwest's present compliance with Section 252 resolves the "unfiled agreements" matter for purposes of Section 271. Residual enforcement proceedings relating to historical violations do not provide a public interest reason to deny Minnesota consumers more competitive choice.

2. The Commission Should Reject Calls for a "Double Punishment" for Past Conduct That Was Corrected Over a Year Ago

Some parties nevertheless ask the Commission to deny this application in the face of its own Section 271 precedent. Their arguments, however, are inconsistent with the Telecommunications Act and should be rejected as such.

Qwest emphasizes, again, that it is not minimizing any past violations. Qwest is fully committed to compliance with Section 252, and all other legal obligations. The Company also is prepared to accept a lawful penalty for any past violations.

But rejection of this application based on prior Section 252 violations would effectively create a "double punishment" for the same past conduct. This is not a case where Qwest can take remedial action to come into compliance with its ongoing legal duties and then refile. It already has done so. Hence, Qwest will be in no different position from a Section 271 perspective in July, or August, or September than it is right now. The only result of Section 271 delay would be to penalize Qwest further for the same conduct that is the subject of the Minnesota proceeding. It also would penalize Minnesota consumers, who otherwise will benefit from increased competition as contemplated by Section 271 itself.

a) AT&T's Argumentation Fails to Distinguish Prior Commission Rulings

AT&T already has tried twice to argue that the historical "unfiled agreements" violations justify rejection of Qwest's entry into the interexchange market. The Commission has twice rejected this claim. AT&T struggles - and fails - to explain why its theory should not be rejected yet a third time.

First of all, the Commission should note that AT&T does not address in any material respect the underlying purpose of the public interest test, and its relationship to the Commission's prior "unfiled agreements" precedent. There is a strong legal reason why the Commission has not found past Section 252 violations to warrant denial of a Section 271 application. The statutory question under Section 271 is not whether the BOC has ever violated the Act. Nor is Section 271 authority a prize that the Commission can withhold as punishment for past violations. Rather, the focus under the Act is on "the requested authorization" - *i.e.*, to provide long distance service - and the Commission must determine whether that authorization "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). Most particularly, the focus is on whether, given the existence of local competition and compliance with the competitive checklist, there is any reason why *the public* should not receive the corresponding benefits of greater long distance competition.

The Commission has explained that it "may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest." *Texas 271 Order*, 15 FCC Rcd at 18558 ¶ 417. Significantly, however, the Commission has held repeatedly that "compliance with the competitive checklist is, itself, a strong indicator that long distance entry is consistent with the public interest." *New York 271 Order* ¶ 422; *see also Kansas/Oklahoma 271 Order* ¶ 268. Thus, the Commission has

"disagree[d] with commenters who assert that we must, under our public interest standard, consider a variety of other factors as evidence that the local market is not yet truly open to competition, despite checklist compliance." *New Jersey 271 Order* ¶ 168 & n.516.

Furthermore, the Commission has emphasized that the Act's public interest inquiry is primarily forward-looking, focusing on what will happen when the BOC enters the interLATA market. In particular, the Commission has considered whether the progress already demonstrated with regard to checklist compliance will be undone. And the Commission has resolved that question by examining the adequacy of the BOC's performance assurance plan.

AT&T makes no serious effort to address the public interest standard in these terms. It does not challenge the benefits of Qwest's competitive entry to the public. It does not challenge Qwest's Minnesota PAP. It presents only the limited checklist compliance issues that are discussed above. Instead, it turns back to what the Commission already has said the public interest standard is *not* about - an enforcement matter involving past conduct.

AT&T fills its comments with vitriolic rhetoric alleging that these past violations speak to the present openness of the Minnesota market. But, as discussed above, the Commission already has found that present compliance with Section 252 satisfies Section 271 with respect to non-discrimination. If anything, Minnesota arguably presents *a stronger case* than the Qwest III and IV states because an even longer time has run since Qwest put in place its corrective measures with respect to Section 252. AT&T also tosses around unsupported allegations that the past Section 252 violations have denied consumers a competitive local exchange market. But here again Minnesota presents *a stronger case* than prior Qwest-approved

states. AT&T disregards the record evidence showing that Minnesota has one of the nation's most active competitive markets. [30/]

AT&T attempts to distinguish this application from Qwest III and IV by reference to the rulings of the MNPUC and the size of the penalties. Qwest has its differences with both, but that is beside the point. For all of AT&T's rhetoric, the fact remains that the conduct at issue is in the past - an increasingly distant past. These contracts were executed between 1999 and 2001. The senior management responsible for them are no longer with the company. New processes and procedures are in place. Qwest has the benefit of the Commission's *Declaratory Ruling* interpreting Section 252 filing responsibilities. We will not debate AT&T's characterization of the past. The relevant point is that past mistakes do not provide a basis for ignoring the Commission's precedent in this area, as the Department of Justice recently noted.

This is underscored further by an examination of the Minnesota "unfiled agreements" record itself. The MNPUC has expressly recognized that the conduct at issue is in the past and not ongoing. It has established remedies that are limited to a period ending on May 15, *2002* – nearly a year ago. [31/] Thus, the penalties imposed by the MNPUC should be seen for what they are: backward looking remedies for past conduct, rather than an attempt to "level the playing field" going forward. *See* Scott/Johnson Comments at 35.

AT&T points in a footnote to the Commission's suggestion in the *Michigan 271 Order* that a "pattern of discriminatory conduct" could be so serious as to undermine confidence

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[30/] Indeed, one of the ironies of the "unfiled agreements" matter is that Qwest is not accused of discriminating in favor of itself and against competitors. It is accused of helping some competitors more than others.

[31/] April 30 MNPUC Penalties Order, *supra*, at 12. *See* MNPUC April 8, 2003 Transcript, *supra*, at 5-12 (discussing lack of rationale for remedies after that date).

that the local market is and will remain open to competition. AT&T Comments at 7 n.2 (*citing Michigan 271 Order* ¶¶ 396-97). The Commission has never found such a case, and indeed clarified in the same discussion that even in the case of past misconduct by a BOC, the adoption of a performance assurance plan or other performance-related commitments "could alleviate substantially these concerns" going forward. *Id.* ¶ 399. In this case, Qwest has a strong performance assurance plan, and the violations at issue have not reoccurred for over a year.

The three Minnesota Commissioners' recitation of other, unrelated instances of allegedly improper conduct by Qwest also do not constitute a basis for denial of this Section 271 application. *See, e.g.*, Scott/Johnson Comments at 36-37; Reha Comments at 28-29. Certain Commissioner contentions, like their arguments regarding the "unfiled agreements" matter, are based on MNPUC findings that Qwest is actively appealing. Other Commissioner contentions are based on the MNPUC's findings with respect to complaints to enforce interconnection agreements filed by CLECs. But, consistent with the Commission's Section 271 precedent, these complaints are appropriately resolved by the MNPUC without resort to the Section 271 process conducted by this Commission. *See, e.g., Texas 271 Order* ¶ 78 n.168 (declining to withhold Section 271 approval on the basis of a pending interconnection dispute, which "is appropriately resolved through the Texas Commission's arbitration process"); *California 271 Order* ¶ 158. The Commission has stated repeatedly that, "although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions." *Id.* (internal quotation marks and footnote omitted). *See also New Jersey 271 Order* ¶¶ 159, 160 (disputes regarding conflicting interpretations of interconnection agreements properly resolved by state commission independent of Section 271 review process).

Finally, there is no basis in the Act or in this Commission's Section 271 or other precedent for the three Minnesota Commissions' apparent view that mere *complaints* constitute evidence of wrongdoing, much less provide a valid ground for denial of a Section 271 application. To the contrary, the Commission consistently has refused to draw any inferences from unadjudicated allegations involving an applicant. *See, e.g., Policy Regarding Character Qualifications in Broadcast Licensing*, 7 FCC Rcd 6564, 6566 (pending litigation "presumptively not relevant" to broadcast licensee qualifications). *See also* 47 U.S.C. § 504(c) (issuance of notice of apparent liability for forfeiture may not be introduced in another proceeding unless the forfeiture has been paid or a judicial order of payment has become final).

b) Qwest Should Not Be Required to Waive its Legal Rights in the Enforcement Case to Obtain Section 271 Authority

As Qwest has discussed, it is still reviewing the MNPUC's most recent order in the "unfiled agreements" enforcement proceeding. On the one hand, Qwest shares the MNPUC's interest in minimizing further litigation over this matter. At the same time, Qwest has serious legal differences with the MNPUC.

First of all, Qwest takes strong exception to the suggestions of AT&T and WorldCom that a company's pursuit of its legal rights, especially in the area of appropriate penalties, provides any basis for denial of this application. Indeed, Qwest's differences with the MNPUC have nothing to do with the future. They relate to the appropriate consequences for the conduct in the receding past.

Similarly, like the Department of Justice, the Commission should not give deference to those Minnesota Commissioners who have withheld their support here because Qwest has not acceded to the MNPUC's penalties order as it currently stands. MNPUC Chair Koppendrayer is correct when he recommends approval of this Section 271 application

notwithstanding the MNPUC's review of past conduct in the "unfiled agreements" docket. The Chair expressly supports "Qwest's right to due process, including the right to appeal the MNPUC's unfiled agreements decision in court," and concludes that the pendency of the enforcement proceeding "need not impede the approval of Qwest's Minnesota 271 Application." Koppendrayer Comments at 22.

With all due respect to the other Minnesota Commissioners, it would be wrong to require Qwest, for the sake of Section 271 approval, to give up its procedural rights in a separate proceeding regarding remedies for conduct that is not continuing. As Qwest has stated, the Company shares the MNPUC's interest in bringing full closure to the penalties stage of the "unfiled agreements" docket. In appropriate circumstances, Qwest may be prepared to waive appeal rights for a fair settlement with the parties. Although we are not there yet, the Company is confident that this matter will be resolved in due course. But Qwest is in compliance with Section 252 today, and that is all that Section 271 requires in this area. [32/]

3. The Unfiled Agreements Proceeding Does Not Present a Basis for Finding that Qwest is not providing Resale as Required by Checklist Item 14

One residual issue remains regarding the "unfiled agreements" case. The MNPUC, and the individual Minnesota Commissioners in their separate comments, agree that Qwest has resolved the only remaining SGAT issue (on termination liability assessments) regarding Checklist Item No. 14 - resale. *See* MNPUC Comments at 14; Koppendrayer

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32/ Certainly this Commission should not allow itself to be implicated in any attempt to link approval of Qwest's application with its waiver of important procedural safeguards. *Cf., e.g., Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("For at least a quarter-century, this Court has made clear that even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely."); *Sherbert v. Verner*, 374 U.S. 398 (1963).

Comments at 21-22; Reha Comments at 26; Scott/Johnson Comments at 33. In their separate comments, however, Commissioners Reha, Scott and Johnson contend that Qwest cannot be found to have complied with Checklist Item No. 14 because it has not accepted the remedial measures ordered by the MNPUC in the "unfiled agreements" enforcement proceeding. *See id.* But, as discussed above, this Commission has twice concluded that any ongoing "price and service discrimination" (*see* Scott/Johnson Comments at 33) that may have existed as a consequence of the "unfiled agreements" matter has been remedied by Qwest's submission of previously unfiled interconnection agreements in Minnesota and the MNPUC's acting on them. *See Qwest III Order* ¶ 487. *See also* Koppendrayer Comments at 22 (finding "no information" in the record on which "to base a recommendation of non-compliance with Checklist Item No. 14"). Thus, here as elsewhere it would not be appropriate to deny this application based on remedies for conduct that is no longer ongoing.

CONCLUSION

No party has disputed that new entrants are actually offering competitive local telecommunications services to substantial numbers of both residential and business customers in Minnesota – the "most probative evidence" that all entry strategies are available and that grant of a Section 271 application would be in the public interest. *Michigan 271 Order* ¶ 391. No credible evidence has been presented to suggest that this Commission's prior finding of compliance with respect to Qwest's OSS should be any different in this proceeding. No commenter has disputed the public benefits of increased competition that will result from Qwest entry into the interLATA market. And finally, the Commission already has found twice that the "unfiled agreements" enforcement matter – dealing with historical conduct correcter over a year ago – does not trump these demonstrable benefits to the public.

Accordingly, for all the reasons stated herein and in its opening brief, Qwest's Application should be granted.

Respectfully submitted,

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May 8, 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No. 03-90**
	)	
	)	
Application for Authority to Provide In-Region, InterLATA Services in Minnesota	)	

APPENDIX TO REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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Performance Results Under MR-7 (UNE-P-POTS) in Dec. 2002 and Feb.2003

Qwest's MR-7 (Repair Repeat Report Rate) performance results for UNE-P-POTs indicates that both MR-7A, Dispatches within MSAs, and MR-7B, Dispatches outside MSAs, have been in parity for 12 of the past 12 months. Only MR-7C, No Dispatches, was out of parity in December 2002 and February 2003.

There are two primary causes for the MR-7C out of parity conditions. The first is related to repeat trouble reports that were not caused by a problem with Qwest facilities (*i.e.*, they were determined to be "No Trouble Found"). In December 2002, three of the 13 repeat trouble reports, and, in February 2003, four of 17 repeat trouble reports, were determined to be "No Trouble Found" in the Qwest network. Further, none of the "No Trouble Found" repeat trouble reports resulted in a subsequent Qwest-caused trouble report – meaning the trouble was outside of Qwest's control.

Review of the PID MR-7C*, which removes such "No Trouble Found" reports from the measure, indicates that Qwest Parity Score performance for February 2003 would have improved from 0.37 to 0.17, and for December 2002 would not have changed from 0.13. Parity Scores for both months, however, are very small, making them very close to parity. Viewed in context, these misses are *di minimis,* as Qwest's overall MR-7C* performance indicates parity for 10 of the past 12 months.

The second primary cause of UNE-P POTS trouble reports in December and February resulted from switch feature incompatibility problems. Specifically, the combination of Hunting and Call Forwarding features is incompatible with DMS-100 switches in Qwest's network. In the month of December 2002, ten repeat trouble reports were determined to be feature-related problems of this type. In February, six repeat trouble reports were caused by this switch/feature incompatibility.

Qwest currently addresses the DMS-100 switch/feature incompatibility issue through a manual provisioning process. It is understood that human error can lead to process failure and repeat trouble reports. Therefore, as a part of Qwest's ongoing performance improvement efforts, two potential new solutions have been identified – one mechanized and one involving a new manual process for provisioning the combination of Hunting and Call Forwarding in the DMS-100 switch. Starting May 12, 2003, Qwest will perform a trial to evaluate these solutions in an effort to address the situation.

The remainder of the misses for February repeats were due to random variability and there were no apparent systemic issues. Human error and process non-compliance was addressed on an individual coaching basis.

Performance Results Under MR-8 (UDIT Above DS1) in Dec. 2002 and Feb. 2003

Qwest's performance results under MR-8 for UDIT Above DS1 has been at parity, as measured by the Parity Score, or better in four of the past six months. In December 2002, there were nine trouble reports on a base of 166 installed circuits, resulting in a 5.42% trouble rate. In February 2003, there were five trouble reports attributable to a base of 145 circuits, resulting in a 3.36% trouble rate. For the months of October, November, January, and March, trouble rates ranged from 0.60% to 1.23%.

The variability witnessed over the past six months under MR-8 for this product is not unusual given the low volume of circuits and low volume of trouble reports associated with those circuits. For example, in December 2002, of the nine UDIT Above DS1 trouble reports, two resulted in "No Trouble Found" in Qwest's facilities; five were the result of isolated equipment failures; one was attributable to wiring (subsequent analysis determined that the wiring problem was CLEC-caused); and one was caused by human error. Qwest analysis has determined that the incidence of trouble reports in December were the result of random variability caused by low volumes.

Removal of the trouble reports that did identify a fault condition in the Qwest network (*i.e.*, "No Trouble Found") provides a clearer picture of Qwest's repair performance. Under PID MR-8*, which removes such "No Trouble Found" reports, Qwest performance for February 2003 would have been at parity. This is illustrated in the chart below.

	MR-8 Result	MR-8 Parity Score	MR-8* result	MR-8* Parity Score
Dec-02	9 trouble tickets	1.7	7 trouble tickets	1.47
Jan-03	1 trouble ticket	-1.11	0 trouble tickets	-1.55
Feb-03	5 trouble tickets	0.55	1 trouble ticket	-0.81

Performance Results Under MR-8 (DS1-Capable Loops)

Qwest's performance results in Minnesota under MR-8 for Unbundled Loop - DS1 Capable has shown overall improvement since June, 2002. Although Qwest met or exceeded the parity standard for this PID in only three of the past 12 months, two of these three "mets" occurred in the past four months. In addition, the average trouble rate for CLECs for the past four months (December 2002 – March 2003) was only 1.78%, a difference of less than 0.5% when compared to Qwest Retail's 1.3% trouble rate over this same period. This overall positive trend is a result of ongoing performance improvement efforts, including daily focus calls that started in August 2002 to improve trouble rates for this product.

Qwest performance results for January and March 2003 did not meet the parity standard. Qwest has researched and analyzed the trouble reports for these months and has found that, of the 32 trouble reports in January, four consisted of troubles that "Came Clear" before Qwest completed repair activity; nine were identified as Central Office troubles, eight were Facility troubles, six Station/Network Interface Unit (NIU) troubles, and five were "No Trouble Found"/Test OK. Additionally, of the 32 trouble reports in January, nine (28%) did not require Qwest repair activity (*i.e.*, Came Clear/No Trouble Found/Test OK) to fix the problem. In March, four of the 31 trouble reports "Came Clear," seven were coded to Central Office problems, ten were identified as Facility troubles, two were Station/Network Interface Unit (NIU) troubles, and eight were No Trouble Found"/Test OK. Of the 31 trouble reports in March , 12 (39%) did not appear to require Qwest repair activity to affect the repair.

While a significant portion (approximately 35%) of the Qwest-caused trouble reports in January and March were the result of random variability (*e.g.*, faulty wiring, repeater failure, failure of a backbone system), Qwest also identified a systemic problem associated with electronic cards. Specifically 39% of January's and 26% of March's trouble reports were due to either replacement or re-seating of electronic cards. Of the 23 Qwest attributable trouble reports in January, 12 were the result of bad or loose electronic cards. In March, eight of the 19 trouble reports were caused by bad or loose electronic cards.

In an effort to address this issue, Qwest is modifying its process documentation to include additional testing steps during provisioning and repair. The modified process will be distributed to all field technicians by the end of May, 2003. Additional training on the enhanced process will follow distribution. Finally, to further reinforce processes, Qwest also is creating a job aid to clarify repair "trouble shooting" steps in a methodical sequence to better isolate the trouble. This will reduce the number of circuits being repaired by replacing electronic cards on suspicion or re-seating the electronic cards and instead isolating and repairing the trouble that caused the circuit to fail.

Performance Results Under OP-3 (EELS) Dec. 2002 – Mar. 2003

Qwest's performance under PID OP-3 D and E in Minnesota has been affected by shortage of available facilities. Analysis of the December 2002 through March 2003 EEL orders indicate that without the facility-caused misses, Qwest would have exceeded the 90% benchmark in four of the four months. Qwest research further indicates that extra work that is not defined in Qwest's product description and was not accounted for in the establishment of the Standard Interval is being performed on EEL orders.

Of the 34 orders due in the month of December 2002, the seven misses were related to facility shortages/conditioning. In January 2003, there were five facility/conditioning misses out of 40 orders due. In February, there were seven facility/conditioning misses out of 56 orders. In March, there were ten facility/conditioning misses out of 47 orders. If Qwest had been able to assign the due date based on conditioning, Qwest would have achieved a rate of 91.17% in December, 97.5% in January, 98.21% in February, and 91.48% in March. These results appear in the chart below. [33]

MTH-YR	Original numerator	Original Denominator	Original %	Revised numerator	Revised Denominator	Revised %
Dec-02	27	34	[redacted]	31	34	[redacted]
Jan-03	34	40	[redacted]	39	40	[redacted]
Feb-03	48	56	[redacted]	55	56	[redacted]
Mar-03	33	47	[redacted]	43	47	[redacted]

[33] The Loop Mux Combo (LMC) is in included in these EEL results.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications	)	
International Inc.	)	WC Docket No. 03-90
	)	
Consolidated Application for Authority	)	
to Provide In-Region, InterLATA Services	)	
in the State of Minnesota	)	

REPLY DECLARATIONS

TAB		
1	Thomas R. Freeberg	Checklist Item 1 Interconnection
2	Lynn M V Notarianni & Christie L. Doherty	Checklist Item 2 Operations Support Systems

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No. 03-90**
	)	
	)	
Application for Authority to Provide In-Region, InterLATA Services in Minnesota	)	
	)	

REPLY DECLARATION OF THOMAS R. FREEBERG

Checklist Item 1 of Section 271(c)(2)(B)
Interconnection